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*Attorneys for*  
KELORA SYSTEMS, LLC

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

eBay Inc. and Microsoft Corporation,

*Plaintiffs and Counterclaim-  
Defendants,*

v.

Kelora Systems, LLC,

*Defendant and Counterclaim-Plaintiff.*

) No. 4:10-cv-4947-CW (filed Nov. 2, 2010)

)  
) **DECLARATION OF SHERIF DANISH IN**  
) **SUPPORT OF KELORA'S OPPOSITION**  
) **TO DEFENDANTS' CLAIM**  
) **CONSTRUCTION BRIEF AND MOTION**  
) **FOR SUMMARY JUDGMENT OF**  
) **INVALIDITY AND**  
) **NONINFRINGEMENT**

Cabela's Inc.,

*Plaintiff and Counterclaim-Defendant,*

v.

Kelora Systems, LLC,

*Defendant and Counterclaim-Plaintiff.*

) No. 4:11-cv-1398-CW (filed Mar. 23, 2011)  
) (related case)

Kelora Systems, LLC, ) No. 4:11-cv-1548-CW (filed Nov. 8, 2010)  
(related case)

*Plaintiff and Counterclaim-Defendant,*)

v.)

Target Corporation; OfficeMax )  
Incorporated; Rockler Companies, Inc.; 1- )  
800-Flowers.com, Inc.; Amazon.com, Inc.; )  
Dell, Inc.; Office Depot, Inc.; Newegg Inc.; )  
Costco Wholesale Corporation; Hewlett- )  
Packard Company; CircuitCity.com Inc.; )  
Audible, Inc.; and Zappos.com, Inc., )

*Defendants and Counterclaim- )  
Plaintiffs.*)

OfficeMax Incorporated, )

*Third-Party Plaintiff,*)

v.)

Adobe Systems Incorporated, )

*Third-Party Defendant.*)

Nebraska Furniture Mart, Inc., ) No. 4:11-cv-2284-CW (filed Feb. 3, 2011)  
(related case)

*Plaintiff and Counterclaim-Defendant,*)

v.)

Kelora Systems, LLC, )

*Defendant and Counterclaim-Plaintiff.*)

1 I, Sherif Danish, declare as follows:

2 1. I am a Managing Member of Kelora Systems, LLC (“Kelora”). I am also the first-  
3 named inventor on the patent at issue in this case, U.S. Patent No. 6,275,821 (“the ‘821 patent”). I  
4 have personal knowledge of the following facts. If called as a witness, I could and would testify  
5 competently to these facts.

6 2. The ‘821 patent, entitled “Method and System for Executing a Guided Parametric  
7 Search,” describes systems and methods for performing guided parametric search and includes  
8 claims directed to methods for performing guided parametric search. Kelora practices the  
9 invention disclosed in the ‘821 patent through its award-winning Step Search® technology. Step  
10 Search® is implemented in Kelora’s Commerce Suite software products, which have been  
11 licensed by numerous Fortune 500 companies, including 3M, Hubbell, and Lincoln Electric.

12 3. Kelora’s Commerce Suite software products and the similar products of its  
13 predecessors in interest allow licensees of those products to perform all elements of reexamined  
14 claims 1 and 9 and dependent claims 2, 3, and 4 of the ‘821 Patent. Licensees were encouraged  
15 to use the products in this way and I have first hand knowledge that they did so. Kelora itself  
16 performs one or more of these methods during development, testing, and support of the  
17 Commerce Suite software products and I have firsthand knowledge that current and past licensees  
18 would also routinely perform all the elements of one or more of these claims during their own  
19 deployment, testing, and support processes.

20 4. Kelora’s Commerce Suite software was originally developed and marketed by a  
21 company which I co-founded and at which I formerly worked called Saqqara Systems, Inc.  
22 Saqqara was an assignee of the ‘821 Patent, and its Commerce Suite software products were its  
23 primary assets.

24 5. In or around 1996, a major enterprise software company, Verity, Inc., offered to  
25 purchase Saqqara in order to obtain the Step Search® technology. At the time, Verity was a  
26 provider of software products, including text search and related software products. Verity made  
27 an unsolicited offer to purchase Saqqara for \$10 million, even though Saqqara had only a limited  
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1 number of customers. Negotiations ultimately broke down over the purchase price and the  
2 Saqqara/Verity transaction was never consummated.

3 6. In and around 1997, Saqqara and Microsoft, Inc. commenced business and  
4 technical discussions. In or around July of 1998, Microsoft and Saqqara agreed that Microsoft  
5 would obtain Saqqara's Step Search® product (as it was then called) and install it in anticipation  
6 of integrating it with Microsoft's Site Server product for demonstration purposes at a Microsoft  
7 show in September 1998. Saqqara's technology was demonstrated at the show.

8 7. Thereafter, in or around 2000, Microsoft launched its own competing product,  
9 Commerce Server, that featured parametric search technology under a function called "Stepwise  
10 Search." Microsoft's Commerce Server products currently feature the parametric search  
11 technology utilized in Kelora's Step Search® technology and disclosed and claimed in the '821  
12 Patent. Saqqara had provided Microsoft with access to compiled libraries and human readable  
13 ASP pages comprising an implementation of the claimed methods.

14 8. The parametric search technology disclosed in the '821 Patent has widespread  
15 adoption. I have personally viewed and evaluated hundreds of websites that make use of the  
16 methods set forth in the reexamined claims of the '821 Patent. Based on the latest results of an  
17 ongoing investigation I am managing, I understand that there are thousands of sites that make use  
18 of the methods set forth in the reexamined claims of the '821 Patent.

19 9. The commercial success of the methods of the '821 Patent is evidenced by their  
20 widespread use. Each Defendant performs the methods, and certain Defendants provide the  
21 functionality to others. While there are a number of non-infringing alternatives to searching an  
22 online catalog of products, thousands of retailers perform the claimed method and few eschew it  
23 in favor of the non-infringing alternatives.


24 10. Guided parametric search as claimed in the '821 Patent was not offered by anyone  
25 other than assignees and licensees of the '821 Patent at the time the patent application was  
26 published. Mr. Arnett has testified that pioneers of the world wide web subscribed to the listserve  
27 to which he and Mr. Rhine posted. "[S]o this was the community that was defining the  
28 Worldwide Web standards in these days, and Tim [Berners-Lee] was our leader." Arnett

1 Deposition, 68:20-22 My own review of the archives confirms that luminaries such as Tim  
 2 Berners-Lee, Dave Ragget, and Marc Andresson, all subscribed to this listserve. Nonetheless, it  
 3 was not until after the October 14, 1994, priority date of the '821 patent that any third party  
 4 introduced functionality akin to that claimed by the '821 patent.

5 11. Products by competitors to Saqqara and Kelora, such as Endeca, Fast Search and  
 6 Transfer (FAST), GSI Commerce (now owned by eBay), and Magento, were not available until  
 7 long after the first priority date of the '821 patent of October 14, 1994. Endeca was founded in  
 8 1999. FAST (acquired by Microsoft in 2008) was founded in 1997. Magento was founded in  
 9 2001.

10 I declare under penalty of perjury under the laws of the United States of America that the  
 11 foregoing is true and correct.

12 Executed this 10th day of October 2011, at Cupertino, California.

13  
 14 By:   
 15 Sherif Danish

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